

## INTRODUCTION

These internal operating procedures, which were adopted May 24, 1984, and amended thereafter, describe the manner in which the Supreme Court currently processes, considers and decides judicial matters brought to the court. They also set forth the administrative and professional staff function in the conduct of the court's judicial business and the procedure by which the Supreme Court administers the nonjudicial business of the court. These procedures are intended for the advice of counsel practicing in the Supreme Court and for information to the public; they are not rules of appellate procedure.

Following court reorganization in 1978, we experimented with various procedures that seemed to best serve the objectives of collegiality and efficiency. The court continually reviews its procedures to improve the efficient processing of its caseload and the effective discharge of its administrative responsibilities. Accordingly, these procedures may be changed without notice as circumstances require.

It should be reemphasized that these are not rules. They do not purport to limit or describe in binding fashion the powers or duties of any Supreme Court personnel. These internal operating procedures are merely descriptive of how the court currently functions. Any internal operating procedure may be suspended or modified by majority vote of a quorum of the court.

## I. STAFF

### A. Administrative

1. *Director of State Courts.* The director of state courts, who is appointed by and serves at the pleasure of the court, administers the nonjudicial business of the court system at the direction of the chief justice and the court. The authority and responsibilities of the director are set forth in the Supreme Court Rules, chapter 70.

2. *Clerk.* The clerk of the Supreme Court, who is appointed by the Supreme Court, performs the duties of the office prescribed by law and such other duties as may be prescribed by the court or the chief justice. The clerk is the custodian of all court records and is responsible for the supervision and processing of matters from the time of filing with the court until their ultimate disposition. The clerk is also clerk of the Court of Appeals, and the clerk's office serves both courts. Consequently, the records filed in the Court of Appeals are readily available to the Supreme Court.

3. *Chief Deputy Clerk.* The chief deputy clerk, who is hired by the clerk of the Supreme Court, assists the clerk in the performance of the duties of that office and performs those duties in the absence of the clerk.

4. *Marshal.* The marshal, who is hired by the director of state courts with the approval of the Supreme Court, attends the sessions of the court and performs the duties assigned by the court, the director of state courts and the clerk.

5. *Deputy Marshal.* The deputy marshal, who is hired by the marshal, assists in the performance of the duties of the marshal and, in

the absence of the marshal, performs those duties.

## **B. Legal**

1. *Supreme Court Commissioners.* Supreme Court commissioners are attorneys licensed to practice law in Wisconsin who are hired by and serve at the pleasure of the court. The commissioners perform research, prepare memoranda and make recommendations to the court regarding matters brought within the court's appellate and original jurisdictions and rule-making authority, and perform other duties as the court or the chief justice may direct. Matters are assigned to the commissioners on a rotating basis.

2. *Law Clerks.* Law clerks assist the justices in performing research. Law clerks are hired by and serve at the pleasure of the individual justice. Law clerks are law school graduates who are customarily hired to serve for one year. Each law clerk performs research, prepares memoranda and performs other duties as the individual justice may direct.

## II. DECISIONAL PROCESS - APPELLATE AND ORIGINAL JURISDICTION

The Wisconsin Constitution confers upon the Supreme Court appellate jurisdiction over all courts and jurisdiction to hear original actions and proceedings. As a corollary, the court has constitutional authority to issue all writs necessary in aid of its jurisdiction.

The court's appellate jurisdiction is sought to be invoked by the filing of a petition for review of a decision of the Court of Appeals by a party to whom the decision was adverse, by the filing of a petition to

bypass the Court of Appeals by a party to the circuit court action, or by certification by the Court of Appeals of a circuit court order or judgment appealed to the Court of Appeals. The Supreme Court may also, in its discretion, answer questions of law certified to it by a federal court of appeals and the highest appellate court of any state. The Supreme Court exercises its appellate jurisdiction by granting a petition for review, a petition to bypass, or a certification or by deciding on its own motion to review directly a matter appealed to the Court of Appeals. The court's original and superintending jurisdictions are sought to be invoked by the filing of a petition. The court exercises its original or superintending jurisdiction by granting a petition therefor or by ordering the relief sought.

When a matter is brought to the Supreme Court for review, the court's principal criterion in granting or denying review is not whether the matter was correctly decided or justice done in the lower court, but whether the matter is one that should trigger the institutional responsibilities of the Supreme Court. The same determination governs the exercise of the court's original jurisdiction.

#### **A. Court Schedule**

Subject to modification as needed, in the spring of each year the court sets a schedule for its decisional process for each month from September through June. During each month the chief justice may schedule oral arguments, decision conferences, and administrative conferences on the agreed-upon calendar. Any changes in court dates need unanimous approval.

Filed rules petitions are discussed at open conference as they may

require. No matter, except filed rules petitions, shall be on the agenda for or discussed in open administrative conference unless a majority of the court gives prior approval in closed conference or by email for the placement of that matter on the open conference agenda.

## **B. Staff Analysis and Reporting**

1. *Petition for Review.* Upon filing in the office of the clerk, petitions for review are assigned by clerk staff to the court's commissioners for analysis prior to the court's consideration of the matters presented. Within 50 days of assignment of the petition, the commissioner to whom a petition for review is assigned prepares and circulates to the court a memorandum containing a thorough legal and factual analysis of the petition, including the applicability of the criteria for the granting of a petition for review set forth in Wis. Stat. § (Rule) 809.62(1), a recommendation for the granting or denial of the petition and, where appropriate, a recommendation for submission of the matter to the court for decision on briefs without oral argument.

In addition to the written memorandum, once each month and at other times as the court may direct, a conference is held at which each commissioner orally reports to the court on the petitions for review. Two weeks prior to the conference at which the commissioners report, each commissioner circulates to the court the petitions for review, the responses to those petitions, and a memorandum on each petition, together with an agenda sheet listing by caption and docket number the cases to be reported on at the conference and the commissioner's recommendation in each case. Prior to the conference, each member of the court reads the materials circulated.

At the conference, the chief justice states the name of each case, and the members of the court are asked whether they have any objection to the commissioner's recommendation. If there is no objection, the commissioner's recommendation is accepted without further discussion.

If any justice objects to or asks to discuss the commissioner's recommendation, a discussion is held in which the commissioner or a justice reports on the case. Following discussion, the court decides whether to grant or deny the petition for review and, if the petition is granted, whether the case will be scheduled for oral argument or for submission on briefs and whether the court will limit the issues in the case.

A petition for review is granted upon the affirmative vote of three or more members of the court. The purpose of requiring less than a majority of the court to grant a petition for review is to accommodate the general public policy that appellate review is desirable.

The commissioner to whom the petition has been assigned prepares an order setting forth the court's decision on the petition for review and arranges for the issuance of the order by the office of the clerk. If the petition is granted, the order specifies the court's limitation of issues, if any, and the briefing schedule. The order provides that a party may file a brief or may stand on the brief filed in the Court of Appeals. The parties shall not, in any new brief filed, incorporate by reference any portion of their Court of Appeals briefs or their briefs submitted with or in response to the petition for review.

1m. Upon the filing in the office of the clerk under Wis. Stat. § (Rule) 809.105(11) of a petition for review of the judgment in an

appeal of a decision of the circuit court on a petition to waive parental consent prior to a minor's abortion, the clerk shall notify the chief justice or, if the chief justice is not available, the most senior justice available that the petition has been filed. As soon as practicable after the petition is filed, the clerk shall furnish a copy of the petition to each justice and assign it, with a copy, to a court commissioner.

The court commissioner to whom the petition for review has been assigned shall prepare and circulate to the court within three calendar days of the assignment a memorandum containing a thorough legal and factual analysis of the petition, including the applicability of the criteria for the granting of a petition for review set forth in Wis. Stat. § (Rule) 809.62(1), a recommendation for the granting or denial of the petition and, where appropriate, a recommendation for submission of the matter to the court for decision with or without briefs and with or without oral argument.

Within five calendar days after the filing of the petition for review, the chief justice or, if the chief justice is not available, the most senior justice available shall convene a conference of the members of the court, which may be held by telephone conference call, and the court shall issue an order granting or denying the petition for review. An order granting the petition for review shall set forth a date and time for oral argument, if any, to be held in the court's hearing room, and a date and time for the filing of briefs, if the court orders briefs.

If a petition for review is granted, the court shall issue its decision, with or without a written opinion, within 10 calendar days after the petition for review is filed.

2. *Petition to Bypass, Certification and Direct Review.* A party may request the court to take jurisdiction of an appeal or other proceeding pending in the Court of Appeals by filing a petition to bypass pursuant to Wis. Stat. § (Rule) 809.60. A matter appropriate for bypass is usually one which meets one or more of the criteria for review, Wis. Stat. § (Rule) 809.62(1), and one the court concludes it will ultimately choose to consider regardless of how the Court of Appeals might decide the issues. At times, a petition for bypass will be granted where there is a clear need to hasten the ultimate appellate decision.

The Court of Appeals may request the Supreme Court to exercise its appellate jurisdiction by certifying a pending appeal to the Supreme Court prior to hearing and deciding the matter. Certifications are granted on the basis of the same criteria as petitions to bypass.

Petitions to bypass and certifications are processed according to the procedure set forth above for petitions for review, except that these matters are given priority over petitions for review. Petitions to bypass and certifications are granted upon the affirmative vote of four or more members of the court.

Before the court on its own motion decides to review directly a matter appealed to the Court of Appeals, the chief justice may assign the matter to a commissioner for analysis. If the matter is so assigned, it is processed according to the procedures set forth in this section for petitions to bypass and certifications.

3. *Original Action.* Upon filing in the office of the clerk, a petition requesting the court to take jurisdiction of an original action is



assigned to a court commissioner for analysis prior to the court's consideration of the merits of the matter presented. The commissioner orally reports on the matter to the chief justice as soon as practicable, and the chief justice, or in the absence of the chief justice, the most senior justice present, determines a date on which the matter will be considered by the court at conference. The commissioner reports on the matter at that conference. If time permits, the commissioner circulates a memorandum to the court prior to that conference analyzing the legal and factual issues involved and making a recommendation for the denial of the petition ex parte or for a response to be ordered and for the scheduling of oral argument on the question of the court's exercise of its original jurisdiction, if oral argument is deemed necessary. If circumstances warrant, the chief justice, or in the absence of the chief justice, the most senior justice present, may order a response to the petition for original action and may act on nonsubstantive motions concerning the proceeding.

If the petition is denied, the commissioner prepares an order setting forth that decision and arranges for its issuance through the office of the clerk; if a response is ordered, the commissioner prepares an order setting forth that decision, as well as the decision on oral argument. When the order is approved by the court, the commissioner arranges for its issuance by the office of the clerk. Upon the filing of a response, the matter is referred to the commissioner for analysis and reporting. The original action is then processed according to the procedures set forth above for petitions for review.

A petition to commence an original action is granted upon the

vote of four or more members of the court. The criteria for the granting of a petition to commence an original action are a matter of case law. See, e.g., Petition of Heil, 230 Wis. 428 (1939). The Supreme Court is not a fact-finding tribunal, and although it may refer issues of fact to a circuit court or referee for determination, it generally will not exercise its original jurisdiction in matters involving contested issues of fact. Upon granting a petition to commence an original action, the court may require the parties to file pleadings and stipulations of fact. The court customarily holds oral argument on the merits of the action and expedites the matter to decide it promptly.

4. *Petition for Supervisory Writ; Petition for Writ of Mandamus, Prohibition, Quo Warranto, Habeas Corpus.* The Supreme Court has superintending authority over all actions and proceedings in the circuit courts and the Court of Appeals. It does not ordinarily issue supervisory writs concerning matters pending in circuit courts, as the Court of Appeals also has supervisory authority over all actions and proceedings in those courts. A person may request the Supreme Court to exercise its superintending jurisdiction by filing a petition pursuant to Wis. Stat. § (Rule) 809.71.

Petitions for supervisory writ and petitions for writ of mandamus, prohibition, quo warranto, or habeas corpus are processed according to the procedure set forth above for petition for commencement of an original action, except that if time does not permit consideration by the court, petitions for supervisory writ may be denied ex parte by the chief justice, or in the absence of the chief justice, by the most senior justice present. If it appears from the petition that it should be dismissed on

procedural grounds, the chief justice, acting for the court, may deny the petition *ex parte*.

5. *Regulatory Jurisdiction.* A matter within the regulatory jurisdiction of the court, *e.g.*, bar admission, continuing legal education, lawyer discipline, judicial discipline, Supreme Court Rules, rules of pleading, practice and procedure in civil and criminal actions, is assigned to a court commissioner for analysis and reporting to the court. The commissioner prepares orders in these matters as the court may direct and arranges for their issuance by the office of the clerk.

6. *Motions.* When acting on motions, the chief justice, or in the absence of the chief justice, the most senior justice present, acts on behalf of the court and pursuant to rules of the Supreme Court promulgated from time to time.

a. Unopposed procedural motions are acted on by the clerk. Procedural motions which do not adversely affect another party, *e.g.*, motions to extend time to file briefs or to exceed page limitations of briefs, are acted on by the clerk without a response from the adverse party, unless the clerk requests a response. The clerk decides these motions in consultation with the commissioner to whom the matter has been assigned for analysis and the chief justice. The clerk or the commissioner prepares and issues an appropriate order.

When appropriate, the commissioner presents a motion to the chief justice, or in the absence of the chief justice, the most senior justice present, with a recommendation for the granting or denial of the motion, and the chief justice or the most senior justice present either decides the motion or determines that the matter should be submitted to

the court. The commissioner prepares an appropriate order and, when the order is approved, arranges for its issuance by the office of the clerk.

b. Substantive motions are assigned by clerk staff to the court's commissioners for review and reporting to the court, with or without a memorandum, as time may permit and circumstances may indicate. If the motion is filed in a case that has been assigned to a justice, clerk staff transmits the motion to the court. When the motion has been decided, the commissioner or clerk staff, at the court's direction, prepares an appropriate order and, when the order is approved, arranges for its issuance by the office of the clerk.

c. A motion to file a brief by a person not a party to a proceeding is assigned to the court commissioner to whom the matter has been assigned for analysis, who may grant the motion if it appears that the movant has a special knowledge or experience in the matter at issue in the proceedings so as to render a brief from the movant of significant value to the court. If the commissioner questions the propriety of granting the motion or if it appears that the motion should be denied, the commissioner reports the matter to the court with a recommendation that it be denied. The decision to deny a motion to file an *amicus* brief is that of the court. The commissioner prepares an appropriate order and arranges for its issuance by the office of the clerk.

If the motion is filed in a case that has been assigned to a justice, clerk staff transmits the motion to the court for review and decision. Clerk staff, at the court's direction, prepares and issues an appropriate order.

d. Motions for temporary relief concerning matters pending in

the Supreme Court are assigned to the court or to the commissioner to whom the underlying matter has been assigned and with whom it remains at the time of the filing of the motion. The matter is reported to the court or to the chief justice, or in the absence of the chief justice, to the most senior justice present, with or without a memorandum, as time and circumstances may indicate. The court or the chief justice or the most senior justice present decides the motion, and the commissioner or the court prepares an appropriate order and arranges for its issuance by the office of the clerk.

### **C. Submission Calendar**

The clerk of the court, in consultation with the chief justice, prepares and distributes to the court for each month from September through June, inclusive, a list of cases for submission to the court that month. The clerk assigns cases to the submission calendar in the order of the anticipated filing of the last brief, except that criminal cases and cases involving child custody and termination of parental rights are given priority to the extent possible. The chief justice sets the cases to be assigned each month based on the court's calendar.

The calendar sets the date of oral argument for cases assigned for submission with oral argument and lists the cases assigned for submission on briefs. The date of submission of the oral argument cases is the date of oral argument, and the date of submission of cases assigned for submission on briefs is the date set by the chief justice.

Generally, cases are assigned for submission with oral argument unless it appears from the issues or the briefs that oral argument would not be sufficiently informative to the court to justify the additional

expenditure of court time or cost to the parties or there is another case or cases assigned for submission with oral argument presenting the same issue(s). At least 30 days prior to the first day of oral argument on the calendar, the clerk makes the calendar public and distributes a copy of it to the court, to the parties to the cases on the calendar, and to others who have arranged with the clerk to receive it.

As soon as each month's submission calendar is distributed, the court's marshal delivers a copy of the calendar and the briefs filed to date for each case on that calendar to the office of each justice. Each justice's law clerk prepares memoranda thoroughly analyzing the factual and legal issues in the cases on the calendar as the law clerk's justice may direct. Prior to oral argument, each justice reads the briefs and legal memoranda in each case on the calendar.

#### **D. Oral Argument; Pre-argument Conference**

At 8:45 a.m. on each day of oral arguments the court meets in conference to discuss the cases scheduled for oral argument that day. After the submission calendar is circulated, each justice is randomly assigned cases on it for purposes of leading the discussion of those cases at pre-argument conference on the day of oral argument. At the pre-argument conference the court isolates issues, determines what has not been adequately presented by the parties in the briefs, and determines what issues the parties should address during oral argument and what questions the court should address to counsel to clarify the issues.

At this conference, the court may discuss those cases assigned for submission on briefs presenting the same issue(s) as a case scheduled for oral argument that same day. The court discusses other cases

assigned for submission on briefs on the date set by the chief justice.

The submission calendar lists those cases to be argued in the morning, beginning at 9:45 a.m., and those cases to be argued in the afternoon, beginning at 1:30 p.m. Attorneys are to be present and prepared to argue at the time indicated, which is the earliest time at which their case may be called. Upon their arrival for oral argument, attorneys are to check in with the clerk's office staff outside the courtroom.

When a case is called by the chief justice, counsel are to take their places immediately. The petitioner is to take his or her place to the right of the podium facing the court and the respondent is to be seated to the left of the podium facing the court.

At oral argument, each side is allowed 30 minutes or such other period of time as the court may grant to present argument supplementing or clarifying arguments set forth in the briefs, to present argument on issues specified by the court prior to oral argument and to discuss developments in applicable law which have occurred subsequent to the filing of the briefs. Requests for additional time for oral argument are to be made in writing to the clerk, but such requests are rarely granted. Oral arguments are recorded by the marshal for the court's use, and the recordings are retained for at least 120 days following remittitur. The court may permit parties or interested persons to listen to the recordings. Oral arguments may also be listened to on-line as they occur and are posted to the court's website for listening at any time.

The court's marshal monitors the time for oral argument by the

use of light signals on the podium.

(a) *Opening Argument.* A green light signals the beginning of the opening argument of the petitioner or other party having the burden of going forward. Twenty-five minutes is allotted for opening argument, leaving five minutes for rebuttal. Five minutes prior to the expiration of the time allowed for opening argument, the green light goes off and a yellow light comes on. When the time reserved for opening argument has expired, the yellow light goes off and a red light comes on, and attorneys are to terminate their argument immediately. The division of oral argument time in cases where there is a cross-appeal is to be agreed to by the parties; no more than five minutes may be reserved for rebuttal. A party may cede part of its time to an amicus.

(b) *Respondent's Argument.* The same procedure outlined above for opening argument is used.

(c) *Rebuttal.* A yellow light signals commencement of the time for rebuttal argument by the petitioner or other party having the burden of going forward; five minutes is allotted for rebuttal unless more than 25 minutes has been used in the opening argument. A red light comes on when the time expires, and attorneys are to terminate their argument immediately.

#### **E. Post-argument Decision Conference**

Following each day's oral arguments, the court meets in conference to discuss the cases argued that day. The chief justice presides at the conference, conducts the court's discussion, and calls for the vote on the decision of each case.

For each case, the justice to whom the case was assigned for



presentation at the pre-argument conference gives his or her analysis and recommendation, the court discusses the issues in the case, and the vote of each member of the court on the decision is taken, beginning with the justice who has given the recommendation. When possible, the court reaches a decision in each of the cases argued that day, but any decision is tentative until the decision is mandated. Prior to a tentative decision, any justice may have a case held for further consideration and discussion. Following the court's tentative decision, any justice may request reconferencing for further discussion of the case. In a week following the oral arguments, the court decides the cases (usually discipline cases) on the month's submission calendar that are not decided at post-argument conference.

#### **F. Assignment of Cases**

Immediately after the court reaches its tentative decision in a case, whether at post-argument decision conference or at a succeeding conference, the case is assigned to a member of the court for preparation of the court's opinion. No case is assigned to a justice until after oral argument and after the court has reached its tentative decision.

Each month at least one case is assigned for opinion writing to each justice; an additional case may be assigned to any justice after all justices have been assigned at least one case. Cases are assigned by lot: each justice is assigned a number from one to seven according to seniority, and the next senior justice to the chief justice draws one of seven numbered tokens lying numbered-side down on the conference table. The number drawn for each case determines the justice to whom the writing of the opinion is assigned. A case is assigned only to a

justice who has voted with the majority. In the event a justice to whom a case has been assigned subsequently decides to change his or her vote on the decision of the case and ceases to be among the majority, he or she may withdraw from the assignment; the case is then reassigned by lot to a justice who is among the majority, and another case is assigned to the justice who has withdrawn.

After the cases are assigned, the justice prepares a draft opinion for circulation to the court.

### **G. Opinion**

1. *Justice Declarations.* Within 10 days after the first circulation of a majority opinion, each justice shall declare by email to all justices participating in the case in one of four ways: (1) joining the opinion; (2) joining the opinion if specifically described changes are made; (3) concurring; or (4) dissenting.

2. *Majority Opinion.* Within 10 days of receiving a request for specifically described changes, the author of the majority opinion shall consult among members of the majority to determine whether some or all of the specifically described changes are acceptable. If some or all are acceptable, the majority opinion shall be revised and recirculated within 14 days after the initial 10 day consultation period. If some or all of the specifically described changes are not acceptable to the majority who support the first circulation, the justice whose changes were not accepted shall declare by email that he or she joins the majority opinion, notwithstanding the lack of changes that were requested, or that he or she will write separately. A justice who asked for changes in the majority opinion and does not join the majority opinion shall declare a

concurrence or dissent and circulate his or her separate writing within 21 days of circulation of the revised majority opinion or the determination that the majority opinion will not be revised to meet his or her request, whichever occurs first.

3. *Separate Writings.* Whether concurring or dissenting, a justice who declares a separate writing in response to the first circulation of a majority opinion has 30 days after the justice's declaration to circulate his or her separate writing. No new majority opinions shall be circulated by justices who are writing separately.

4. *Revisions to Majority Opinions; Procedure for Mandating Opinions.* Upon circulation of a separate opinion, the author of the majority opinion has 14 days in which to revise, and upon receipt of those revisions, dissents and concurrences have 14 days to respond to the majority's revisions. The revision of dissents and concurrences shall not create a new opinion, but shall respond only to revisions in the majority opinion. Upon recirculation of the majority opinion and recirculation of the separate writings, each justice shall, within 10 days, by email to all justices participating in the case make a final declaration of which opinion he or she is joining. If during this process the opinion originally circulated as the majority opinion does not garner the vote of a majority of the court, it shall be referred to in separate writings as the "lead opinion." If a separate writing garners the vote of a majority of the court, thereby changing the mandate of the opinion, it shall be revised as the majority opinion within 14 days of the vote of the court. During that same 14 day period, other separate writings shall be revised to indicate their status as concurrences or dissents to the new majority opinion. The

majority opinion and the separate writings shall be mandated upon final declaration. Within 5 days of the mandate, the majority opinion shall be placed in the release drive; within 5 days after that event, the separate writings also shall be placed in the release drive for transmittal of all writings to the clerk's office for release to the public, unless release of separate writings is delayed as required by step 5 below.

5. *Separate Writings to Follow.* If, during the course of a separate writing, the author cites to a case then pending before the court for which the opinion of the court has not been released, the majority opinion shall be released with the designation "separate opinion(s) to follow," unless the citation can be replaced with ellipses in which case the separate opinion shall be released with the majority opinion and the ellipses shall be replaced with the omitted citation when the cited opinion is released. There shall be no further changes to the separate writings after mandate. Separate writings for which the citation cannot be replaced with ellipses shall be released when the then unreleased decision that was cited in the separate opinion is released.

6. *Holds; Tying Together Release of Two Pending Cases.* No one justice may block the release of a majority opinion by a "Hold." It shall take the affirmative vote of the majority of the participating justices to block the release of a majority opinion. No one justice may tie together the release of two pending cases. It shall take the affirmative vote of a majority of the participating justices in each case to tie together the release of two pending cases.

7. *Circulation Dates for Majority Opinions.* Majority opinions assigned in September, October and November shall be circulated no

later than January 31. Majority opinions assigned in December, January and February shall be circulated no later than March 31, Majority opinions assigned in March, April shall be circulated no later than May 31.

8. *Court Conferences on Circulated Opinions.* There will be no court conferences on circulated opinions unless a majority of justices participating in the case request court conference on the circulated opinion(s) in that case.

#### **H. Per Curiam Opinion**

Per curiam opinions may be prepared by a justice or a court commissioner for consideration by the court. Per curiam opinions in judicial and attorney disciplinary proceedings are prepared by a court commissioner for the court's consideration. The decisions in all cases are made by the court, and the per curiam opinions are reviewed by the entire court and are approved as to form and substance by the court prior to issuance.

#### **I. Mandate**

The court's decision in a case is mandated promptly upon approval of the opinion by the court, as set forth above, and upon notification by the chief justice to the clerk, or upon notification by the author of the majority opinion if the chief justice is unable or unwilling to notify the clerk. The court's opinion is issued simultaneously with any concurring or dissenting opinions, unless concurring or dissenting opinion or opinions come within paragraph 5 above as "Separate Writing to Follow."

When a decision is ready to be mandated, the court's opinion,

along with any concurring or dissenting opinions, is transmitted to the clerk's office where it is reviewed and assigned a public domain citation. The case name and number of opinions that are scheduled for release are ordinarily posted on the court's website two days prior to the scheduled release date. On the day of mandate, the clerk's office telephones the attorneys for the parties, notifying them of the court's decision, releases the opinion to the parties and makes copies of the opinion available for public inspection. The opinion is also posted to the court's website. The opinion remains subject to further editing and modification. The office of the clerk arranges for the publication of the final version of the opinion in the official publications.

#### **J. Reconsideration**

The court does not reconsider its decision on petitions for review or petitions to bypass. Motions for reconsideration of the judgment or order of the court in other matters are assigned in rotation by the office of the clerk to a member of the court who participated in but did not author the court's opinion or write a dissent in the case. The justice reports on the motion at conference and makes a recommendation. Every motion for reconsideration is discussed by the entire court at conference.

Reconsideration, in the sense of a rehearing of the case, is seldom granted. A change of decision on reconsideration will ensue only when the court has overlooked controlling legal precedent or important policy considerations or has overlooked or misconstrued a controlling or significant fact appearing in the record. A motion for reconsideration may result in the court's issuing a corrective or explanatory

memorandum to its opinion without changing the original mandate.

The justice to whom a motion for reconsideration is assigned informs the office of the clerk of the court's decision on reconsideration, and the clerk issues an appropriate order. If reconsideration is granted and further briefing required, the case is placed with other pending cases and processed accordingly.

#### **K. Remittitur**

The clerk transmits to the Court of Appeals or to the circuit court, as appropriate, the mandate and opinion of the court together with the record in the case as follows: 31 days after the filing of the opinion of the court when no motion for reconsideration is filed; upon completion of reconsideration when reconsideration is granted; promptly upon the court's decision denying a motion for reconsideration.

#### **L. Miscellaneous**

1. *Recusal or Disqualification of Justices.* A justice may recuse himself or herself under any circumstances sufficient to require such action. The grounds for disqualification of a justice are set forth in Wis. Stat. § 757.19. The decision of a justice to recuse or disqualify himself or herself is that of the justice alone. When a justice recuses or disqualifies himself or herself, the justice takes no further part in the court's consideration of the matter. A justice who recuses himself or herself may file with the court or as part of a published opinion only the statement that: (a) the justice took no part; (b) the justice did not participate; or (c) the justice withdrew from participation. The court's orders and the opinion in the matter bear the notation that the justice took no part or did not participate or withdrew from consideration of the

case.

2. *Indigency.* If a person seeking to proceed in the Supreme Court claims to be indigent, that claim will generally be accepted if an indigency determination as to that person previously has been made in the Supreme Court or in the Court of Appeals. If more than one year has elapsed since the indigency determination or if the subsequent case is of a substantially different type than the one in which the indigency determination was originally made, the clerk may request the person to submit a new affidavit of indigency form. If no indigency determination has been made previously, the clerk sends the person an affidavit of indigency to be completed and returned. The affidavit is accompanied by a form order requiring completion and filing of the affidavit within 10 days of the date of the order or, failing which, ordering the dismissal of the proceedings.

The clerk makes indigency determinations. If the person is determined to be indigent, the clerk issues an order waiving payment of the filing fee in the proceeding. If the affidavit of indigency is incomplete or is not credible, the clerk issues an order stating that the affidavit is incomplete or the reasons for which the affidavit is deemed not credible, stating that the affidavit is not approved and requiring the person either to pay the appropriate filing fee or submit a credible and completed affidavit within five days of the date of the order, failing which the proceedings will be dismissed.

If the clerk determines on the basis of a complete and credible affidavit that a person is not indigent, the clerk issues an order directing the person to pay the appropriate filing fee in the proceedings. If the



person does not respond to a court order concerning indigency, the clerk assigns the matter to a commissioner for review; the commissioner reports to the court with recommendations.

3. *Statistics.* The clerk prepares a monthly statistical report setting forth the status of matters pending with the court and a cumulative accounting of matters disposed by the court from the preceding September. The clerk distributes a copy of these statistical reports to the court and to the director of state courts.

4. *Voluntary Dismissal.* If a notice of voluntary dismissal of a proceeding on a petition for review, petition for bypass or certification or of an original action or supervisory writ proceeding is filed before all of the briefs in the proceeding are filed, the chief justice may act on the notice; if a notice of voluntary dismissal is filed after all of the briefs in the proceeding are filed, the chief justice shall bring the notice to the court for action.

### III. RULE-MAKING PROCESS

#### **A. Public Hearing**

The court notices and holds a public hearing on a petition for the creation or amendment of rules governing pleading, practice and procedure in judicial proceedings in all courts, provided that the court deems the petition to have arguable merit. In the event the court deems a petition meritless, it may, without holding a public hearing, summarily dismiss the petition or decline to take any action. See Wis. Stat. § 751.12. The court also holds a public hearing on a petition for amendment of the Supreme Court Rules except, in the court's discretion,

when the petition concerns ministerial or otherwise non-substantive matters or when exigent circumstances exist.

### **B. Open Conference**

After a public hearing is held the court meets in open conference in the Supreme Court Hearing Room to discuss the merits of and act on the rules petition. The court also holds open conference on other administrative matters if a majority of the court has given prior approval in closed conference or by email for the placement of such administrative matter on the open conference agenda. The following provisions apply to the open conference on rules petitions:

1. *Notice.* The court gives notice prior to the conference as promptly and as widely circulated as feasible. Written notice of the conference is mailed to persons who appeared at the public hearing, filed material with the court in the matter or made a written request to the clerk of the court for notice of conference. If the court schedules the conference to be held immediately following the public hearing, notice of the conference is given in the order setting the rules petition for public hearing.

2. *Procedure.* Members of the court convene at the attorneys table in the Supreme Court Hearing Room and the chief justice presides. Microphones are provided for sound amplification and to provide a recording of the conference.

3. *Public Attendance.* The public is invited to observe the conference from the area designated for public seating but may not participate in it.

4. *Media Coverage.* The rules governing electronic media and

still photography coverage of judicial proceedings, SCR chapter 61, apply to open conferences.

5. *Staff.* All matters within the court's rule-making jurisdiction are assigned to a court commissioner for analysis and reporting to the court. See IOP. II. B. 5. The commissioner prepares and circulates material to the court for its assistance at the conference, participates in the conference at the court's discretion, and drafts rules and prepares orders at the court's direction.

6. *Adjournment.* If the court does not complete discussion of the rules petition at the conference, it adjourns the conference to a specified date or a date to be determined. If not adjourned to a specific date, notice of an adjourned conference is given pursuant to par. B.1.

7. *Exceptions.*

a. An open conference is not held when it appears that only non-substantive aspects of the rules petition will be discussed.

b. Upon vote of the majority in open court, the court may discuss and act on the rules petition in conference closed to the public.

#### IV. APPOINTMENT PROCESS

The Wisconsin Supreme Court, pursuant to statutory authority and the court's rules, regularly appoints lawyers and nonlawyer members of the public to various boards, committees, and other entities. In making those appointments, it is the court's objective to maximize the participation of lawyers and the public in the work of those entities. To avoid the appearance of favoritism or patronage in

the appointment process, the court has created a committee independent of the court to assist in the process. The Appointment Selection Committee solicits and evaluates persons for appointment and nominates for the court's consideration the persons it determines are best qualified to serve. In evaluating the qualifications of persons interested in appointment, the Appointment Selection Committee applies the criteria established by the court for each of the entities to which appointment is made.

In order to ensure the integrity of the appointment process and avoid any perception that individual members of the court are interested or involved in the selection of specific individuals to be nominated by the Committee for appointment, the Appointment Selection Committee itself is not appointed by the court but by persons—lawyers and members of the public—designated not by name but by positions held in organizations related to the bar and state government. In this way, any perception that an individual member of the court is in a position to exert influence over any member of the Appointment Selection Committee or any of its decisions is obviated. No member of the court participates in the appointment process until after the Appointment Selection Committee has submitted nominations for specific appointment.

In making appointments, the court's objective is to provide quality and promote diversity on the boards, committees and other entities. The appointment procedure established by the court is designed to produce appointments based solely on the qualities of integrity, intelligence, experience and commitment.

## **A. Appointment Selection Committee**

The Appointment Selection Committee (Committee) consists of the following 12 persons:

One attorney from the Milwaukee metropolitan area selected by the dean of the Marquette University Law School.

One attorney from outside the Milwaukee metropolitan area selected by the dean of the University of Wisconsin Law School.

The president of a county bar association located within the Eastern District of Wisconsin chosen by the court by lot, or his or her designee.

The president of a county bar association located within the Western District of Wisconsin chosen by the court by lot, or his or her designee.

The chair of the Family Law Section of the State Bar of Wisconsin, or his or her designee.

The chair of the General Practice Section of the State Bar of Wisconsin, or his or her designee.

The president of the Government Lawyers Division of the State Bar of Wisconsin, or his or her designee.

One former member of the Board of Attorneys Professional Responsibility or the Board of Bar Examiners who has not served within the preceding five years, chosen by the court by lot.

The chair of one of the district professional responsibility committees provided in SCR 21.08, chosen by the court by lot.

One nonlawyer member of the public designated by the Senate Co-Chair of the Legislative Council.

One nonlawyer member of the public designated by the Assembly Co-Chair of the Legislative Council.

One nonlawyer member of the public designated by the chair of the State Ethics Board.

To be eligible to serve on the Appointment Selection Committee, a lawyer must have practiced law for more than five years.

The term of a member is three years; the terms of the initial members are staggered by the court by lot to provide for the expiration of four members' terms each year.

Vacancies on the Appointment Selection Committee are filled by the persons identified above, respectively. Where the person is specified to be chosen by lot, a person is chosen by lot each time there is a vacancy in that position.

The Committee selects its chair at the first meeting of each calendar year. Staff support is provided to the Committee.

### **B. Meetings**

The Committee meets at such times as considered necessary by its chair. The meetings are held at locations and times so as to enable the greatest number of members to participate.

### **C. Nomination Procedure**

1. *Notice of Vacancy.* Each board, committee and other entity to which the Supreme Court makes appointment of lawyers and nonlawyer members of the public notifies the clerk of the court as soon as practicable of appointments that need to be made. The clerk of the court notifies the Committee chair of those appointments.

2. *Information to and Solicitation of Interested Persons.* In addition to the information disseminated by the court regarding the appointment of lawyers and nonlawyer members of the public, the Committee publicizes the appointments to be made by such means as, in the Committee's discretion, will provide notice to the greatest number of persons likely to be interested in being appointed. To the extent it deems necessary, the Committee may conduct in-person information and solicitation sessions to produce qualified persons interested in being appointed.

3. *Resumes; Interviews.* The Committee invites persons interested in being appointed to submit a written resume of their qualifications. The Committee may personally interview those persons whose resumes demonstrate qualifications that appear to warrant a personal, confidential interview before the full Committee or any number of its members the Committee may designate.

4. *Nomination.* Not less than 30 days prior to the expiration of a term or other applicable date that requires an appointment by the Supreme Court, the Committee submits to the Supreme Court the names of at least two persons it nominates for appointment. If more than one position on a particular board, committee or other entity is to be filled by appointment at the same time, the Committee, in its

discretion, may submit the number of names it considers appropriate for appointment to the positions generally or in respect to each position separately. Together with the nominations, the Committee submits to the court the resumes and other material it has considered regarding the persons nominated. The court may ask the Committee to submit additional nominations.

5. *Reappointment.* When a member of a board, committee or other entity is eligible for reappointment to a successive term, the Committee ascertains whether the member regularly attended meetings of the board, committee or other entity, made significant contribution to its work, and is willing to accept reappointment. If the member's participation has been satisfactory and the member is willing to accept reappointment, and the Committee nominates the member for reappointment to a successive term, it is unnecessary for the Committee to nominate other persons for appointment to the position. If the member's participation has been unsatisfactory or the member is not willing to accept reappointment, the Committee proceeds as in the case of an appointment.

6. *Criteria.* In determining the qualifications of persons for appointment, the Committee applies the criteria for the specific position established by the court from time to time and provided to the Committee in writing. The Committee may, with the approval of the court, apply additional specific criteria.

#### **D. Reimbursement**

Members of the Committee are reimbursed for travel, lodging and related expenses reasonably incurred in carrying out their duties.



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